

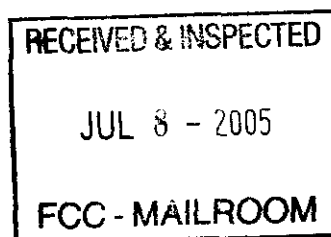
Donna J. Katos
Managing Attorney - Litigation
713/324-5159

ET-05-247
**Continental
Airlines**



Legal Department
41st Floor HQSLG
1600 Smith Street
Houston TX 77002
Tel 713 324 5131
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continental.com

July 7, 2005



VIA FEDERAL EXPRESS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

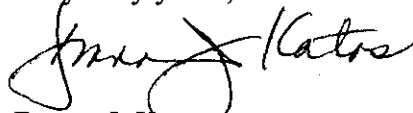
Re: Petition of Continental Airlines, Inc. for a Declaratory Ruling

Dear Secretary Dortch:

Enclosed are the original and two copies of Continental Airlines, Inc.'s Petition for Declaratory Ruling, along with supporting Affidavit and Exhibits for filing and consideration by the Commission.

Thank you.

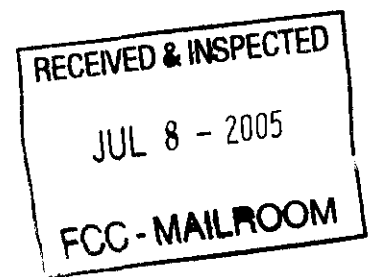
Very truly yours,


Donna J. Katos

Enclosures

cc w/ encls: Gregory S. Zanni (via fax and FedEx)
Deborah Lau Kee, Esq. (via fax and FedEx)
cc: Director, Airport Business office (via fax-617/561-1891)
Airport Chief Legal Counsel (via fax-617/568-3161)

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.



PETITION FOR A DECLARATORY
RULING PURSUANT TO 47 CFR § 1.2

PETITION OF
CONTINENTAL AIRLINES, INC.
FOR A DECLARATORY RULING

Continental Airlines, Inc. ("Continental") petitions the Federal Communications Commission (the "Commission" or "FCC") pursuant to 47 CFR § 1.2 for a declaratory ruling, as authorized by 47 CFR § 1.4000 (e), to allow Continental to continue to maintain and to use its antenna for the reception and transmission of fixed wireless signals in its frequent flyer lounge ("President's Club") at Boston-Logan International Airport ("Logan"), as authorized by Part 1, Subpart S of the FCC's Regulations and the FCC's Public Notice DA 04-1844 dated June 24, 2004, despite the restrictions and removal of such antenna that the Massachusetts Port Authority ("Massport") seeks to impose on Continental.

In support of this Petition, Continental submits the following, in addition to the attached Affidavit and Exhibits:

1. By letter dated June 10, 2005, Massport referred to certain Lease restrictions under its Lease with Continental at Logan that

purportedly prohibited the installation of Continental's antenna located in its President's Club. It further demanded that such antenna be removed by July 9, 2005. (*Please see* Exhibit "A" attached hereto.)

2. By letter dated June 23, 2005, Continental responded to this demand and advised Massport that it believes that the wireless Internet service (via such antenna) which it provides free of charge to its customers at the President's Club, is within the exclusive area under the Lease and that the Lease restrictions imposed by Massport are subordinate to, and prohibited by, the Over-the-Air Reception Devices ("OTARD") rules under 47 CFR § 1.4000 et seq., in particular 47 CFR § 1.4000(a). Without prejudice to Continental's rights under the Lease and the OTARD rules, in the interests of preserving its relationship with Massport, Continental asked Massport to explain what alternatives it would be offering and at what cost. (*Please see* "Exhibit B", attached hereto.)
3. On July 5, 2005, Massport sent its written response. In that letter, Massport takes the position that the Lease does not violate the FCC Regulations, "*even assuming that the Regulations are lawful (which Massport does not concede).*" (emphasis added.) It also refers to the FCC's May 2001 Fact Sheet in reference to the use of a central antenna, and contends that the Regulations "do not require that the cost to a tenant of using a central antenna be equal to or lower than

the costs of installing, maintaining, and using an individual antenna installed by the tenant." It further contends that AWG, a third party vendor (with whom Continental believes that Massport has contracted for the central antenna), would have a rate structure for airline use "based on the number of enplanements at Logan Airport or on the number of 'hits'." Next, Massport advises Continental that there is a "potential threat" to the safety and security wireless applications at Logan, including "critical public safety communications by the State Police, the Transportation Security Administration, and the Authority" such that "the Regulations would permit Massport to require Continental to remove its antenna." Finally, Massport demands that the antenna be removed by July 9, or "Massport will take all necessary steps to have the antenna removed." (*Please see* "Exhibit C" attached hereto.)

4. Based on the foregoing, and the Affidavit and Exhibits attached hereto in support of this Petition, Continental petitions the FCC for a declaratory ruling, on motion of Continental or the FCC, that holds and provides relief as follows:
 - a. That the FCC has exclusive jurisdiction over the issues concerning the installation, maintenance and use of Continental's fixed wireless antenna located in its President's Club at Logan, and that the FCC regulations at issue, Subpart S, Part 1 of Title 47, Code of

Federal Regulations (the OTARD rules), are lawful and controlling on the issues raised by this petition;

- b. That Massport may take no action in regard to the subject antenna or Lease restrictions in accordance with 47 CFR § 1.4000 (a) (4) pending the FCC's completion of its review of this petition and until final action is taken by the FCC;
- c. That Massport's demand and/or the Lease provisions on which it relies to make such demand to remove the fixed wireless antenna in Continental's President's Club, are prohibited and preempted by the OTARD rules under 47 CFR §1.4000 et seq. and by the FCC's holdings in its "Public Notice" DA 04-1844 dated June 24, 2004;
- d. That, pursuant to 47 CFR § 1.4000 (a) (3) (ii), Massport may not require or impose a central antenna provided by a third-party vendor as an alternative at Massport since it will unreasonably increase the cost of Continental's and/or its customers' use of wireless services currently offered by Continental at no charge to its customers in the President's Club;
- e. That the Massport demand is inconsistent with the OTARD objective of promoting competition and consumer choice in the selection of telecommunications providers. The demand is particularly onerous in this instance because Continental, as an

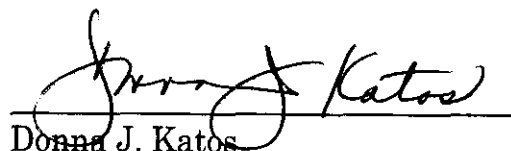
airline tenant, must operate at Logan in this instance, and cannot relocate to some alternative facility;

- f. That, pursuant to 47 CFR § 1.4000 (b) (1) and (3), there is no “clearly defined, legitimate safety objective that is either stated in the text, preamble, or legislative history of the restriction or described as applying to that restriction in a document that is readily available to antenna users, and would be applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures that are comparable in size and weight and pose a similar or greater safety risk as these antennas and to which local regulation would normally apply”, and, it is “more burdensome to affected antenna users than is necessary to achieve the objective described in paragraph (b) (1) of this section.”

Moreover, Continental requests such other relief as the FCC deems appropriate on its own motion to issue by declaratory ruling to ensure that Continental's rights are preserved to maintain and to use its fixed wireless antenna in its President's Club at Logan.

Respectfully submitted,

CONTINENTAL AIRLINES, INC.

A handwritten signature in dark ink, appearing to read "Donna J. Katos", is written over a horizontal line.

Donna J. Katos
Thomas Newton Bolling

July 7, 2005

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing Petition, Affidavit and Exhibits on the following interested persons in accordance with 47 CFR §1.4000 (f):

Massachusetts Port Authority, One Harborside Drive, Suite 200S, East Boston, MA 02128-2909, to the attention of: Gregory S. Zanni and Deborah Lau Kee.

July 7, 2005



Donna J. Katos

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

PETITION FOR DECLARATORY
RULING PURSUANT TO 47 CFR 1.4000

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**AFFIDAVIT IN SUPPORT OF PETITION OF
CONTINENTAL AIRLINES, INC.**

Robert Edwards, being duly sworn, states as follows:

1. I have been employed by Continental Airlines, Inc for 26 years and am currently Staff Vice President of Systems Operations in the Technology Department. I have held such position since January 1, 2000. I am personally familiar with the facts stated in Continental's Petition for Declaratory Ruling either by my own personal knowledge or as learned in my position at Continental. I submit this Affidavit in support of Continental's Petition for Declaratory Ruling.
2. Continental has had its fixed wireless antenna at Logan International Airport since July 2004. To my knowledge, Massport's letter of July 5, 2005 describing the "potential threat to public safety" is the first time Continental has been informed of such alleged safety concerns connected with our antenna at Logan.
3. Continental has been told by Massport on one prior occasion of which I am aware that its frequency waves being emitted from the Presidents Club were purportedly allowing some customers at Massport access to our free wireless services when standing outside of our Presidents Club; as a result of this complaint, Continental lowered the frequency on the antenna.

4. Continental currently offers free wireless service to its customers in our Presidents Club and incurs a minimal operation fee each month to support the antenna service. Under the alternative rate structure for wireless services proposed by Massport in its letter of July 5, 2005, its third party vendor, AWG, would purportedly charge Continental "based on the number of enplanements at Logan Airport or on the number of "hits." Since Continental has an estimated average of 1,355 enplanements (defined as revenue passengers boarding an airplane) per day at Logan and an estimated average of 32 customers per day who are connecting to the wireless service we offer for free at our Presidents Club, the costs associated with this alternative central antenna will unnecessarily and unreasonably be greater to Continental and possibly force us to pass these costs onto its customers, which we do not want to do.
5. I further state that the facts set forth in the Petition are true and correct.

Sworn to before me this 7th day of July, 2005:



Robert Edwards

Notary Public)

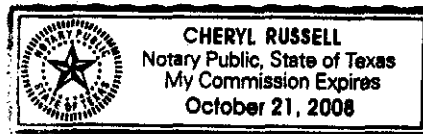
)

)

State of Texas)



My commission expires:





Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston MA 02128-2909
Telephone (617) 428-2800
www.massport.com

June 10, 2005

Mr. Timothy J. Snow
Senior Manager
Corporate Real Estate
Continental Airlines, Inc.
Department HQS-PF
1600 Smith Street
Houston, TX 77002

RECEIVED
Continental Airlines
JUN 13 2005
Corporate Real Estate

Re: Boston-Logan International Airport
Lease L-7936

Dear Tim:

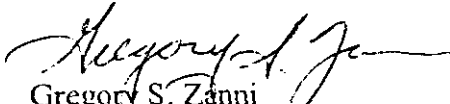
As we have discussed, Continental Airlines, Inc. ("Continental") has installed an unauthorized antenna within its premises, specifically, within its club room area. Please be advised that such an installation is prohibited by the terms and conditions of Lease L-7936 (the "Lease"). Please refer to the Lease, sections 7.2ⁱ, 9.4ⁱⁱ, 10.3ⁱⁱⁱ and 18.1.

In a previous telephone conversation, you indicated that the antenna installation was approved in a tenant alteration application (the "TAA"). The Authority has reviewed and examined that TAA and found that there is no such approval. Please be advised that Continental must remove its unauthorized antenna by July 9, 2005.

Please let me know if you have any questions on this issue.

Sincerely,

MASSACHUSETTS PORT AUTHORITY


Gregory S. Zanni
Manager, Airport Properties

cc: T. Kinton
F. Anglin
D. Kee
J. Revill
S. Phillips (AWG)
J. Willis (Continental)

EXHIBIT A
to Petition of Continental

ⁱ "Tenant shall not use the Premises for any use not specifically granted herein without the prior written approval of the Authority, which approval may be withheld based on any factor which the Authority, in its sole determination, determines has or may have an impact upon the Authority, the Airport or its efficient or productive operations . . ."

ⁱⁱ "The Tenant shall not place . . . any . . . communications equipment, [or] wiring in to, or upon the Premises without the prior written approval of the Authority which may be withheld in its sole and absolute discretion. Any such . . . communications equipment, [or] wiring . . . are hereinafter referred to as the "Tenant Improvements". In addition, the Tenant shall obtain the Authority's prior written approval of any of the Tenant's Improvements in accordance with the TAA Process described in Section 9.8 . . . In the event Tenant fails to obtain the Authority's prior written approval, the Authority may, without limiting other remedies available to it, direct in writing that Tenant . . . remove any work done without the approval of the Authority."

ⁱⁱⁱ "Tenant shall not do or knowingly permit to be done anything which may interfere with the effectiveness or accessibility of any . . . communications system, key card access system . . . and other system, if any, installed or located on, under, in or adjacent to the Premises now or in the future."



Donna J. Ketos
Managing Attorney - Litigation & Dept. Admin.
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continental.com

June 23, 2005

VIA FEDERAL EXPRESS

Gregory S. Zanni
Massachusetts Port Authority
Manager, Airport Properties
One Harborside Drive, Suite 200S
East Boston, MA 02128-2909

Re: Your letter dated June 10, 2005 to Continental Airlines, Inc. ("Continental")

Dear Mr. Zanni:

This is in response to your letter of June 10, 2005 to Timothy Snow, Senior Manager of our Corporate Real Estate department, in which you demanded that Continental remove an "unauthorized antenna within its premises, specifically within its club room area." Our antenna for wireless internet services, which we provide free of charge to our customers in the Presidents Club, is located within Continental's exclusive area under the May 5, 2003 Lease Agreement between Continental and the Massachusetts Port Authority (the "Lease").

We have reviewed the referenced provisions of the Lease that you believe support your position in demanding that we remove our antenna. We disagree with your position, but even if Lease provisions did not permit the antenna to be located within our exclusive premises (which we do not believe), please note that the provisions of the Lease are subordinate to the requirements of the "Over the Air Reception Devices Rule," which is part of the Telecommunications Act of 1996 (see specifically, 47 CFR §1.4000 et seq.) On its face, your demand appears to violate the provisions of the Federal rule. As you may be aware, these regulations prohibit a landlord, including a local government agency, from impairing the installation, maintenance or use of an antenna if such restriction:

- Unreasonably delays or prevents installation, maintenance, or use;
- Unreasonably increases the cost of installation, maintenance or use; or
- Precludes reception or transmission of an acceptable quality signal.

Given the foregoing, Continental is interested to know what alternatives you are offering in lieu of our using our own wireless antenna and at what cost. We would be happy to meet with you to discuss this issue at your earliest convenience and certainly hope that we can amicably resolve this issue in the best interests of our future relationship and of our customers at Massport.

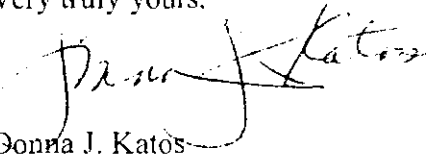
EXHIBIT B
to Petition of Continental

June 23, 2005

Page 2

Please let me hear from you at your earliest convenience. Thank you.

Very truly yours,



Donna J. Katos

cc: Robert Edwards
Tim Snow
Ted Davidson, Esq.



Massachusetts Port Authority
One Harborside Drive, Suite 200S
East Boston MA 02128-2909
Telephone (617) 428-2800
www.massport.com

July 5, 2005

VIA OVERNIGHT MAIL

Donna J. Katos, Esq.
Managing Attorney – Litigation & Dept. Admin.
Continental Airlines, Inc.
41st Floor HQSLG
1600 Smith Street
Houston, TX 77002

Re: Your letter dated June 23, 2005 to Gregory S. Zanni, Massachusetts Port Authority

Dear Ms. Katos:

Your letter dated June 23, 2005 to Gregory S. Zanni of the Massachusetts Port Authority (the "Authority"), was referred to me for reply.

The Authority believes that the provisions of Lease L-7936 (the "Lease") do not violate any portion of 47 CFR §1.4000 et seq. (the "Regulations"), even assuming that the Regulations are lawful (which Massport does not concede). The Authority's implementation of the Lease provisions as they relate to the wireless backbone (the "WiFi backbone") at Boston-Logan International Airport ("Logan Airport") fully comply with the Regulations. As the Federal Communications Commission's May 2001 "Fact Sheet" regarding the Regulations¹ makes clear, a landlord is entitled to require tenants that wish to use fixed wireless services to make use of a central antenna, and thus to bar tenants from installing and operating their own antennas. The FCC's Fact Sheet states that:

Generally, the availability of a central antenna may allow the association, landlord, property owner, or other management entity to restrict the installation by individuals of antennas otherwise protected by the rule. Restrictions based on the availability of a central antenna will be permissible provided that: (1) the person receives the particular video programming or fixed wireless service that the person desires and

¹ Available at <http://www.fcc.gov/mb/facts/otard.html>.

EXHIBIT C
to Petition of Continental

could receive with an individual antenna covered under the rule (*e.g.*, the person would be entitled to receive service from a specific provider, not simply a provider selected by the association); (2) the signal quality of transmission to and from the person's home using the central antenna is as good as, or better than, the quality the person could receive or transmit with an individual antenna covered by the rule; (3) the costs associated with the use of the central antenna are not greater than the costs of installation, maintenance and use of an individual antenna covered under the rule; and (4) the requirement to use the central antenna instead of an individual antenna does not unreasonably delay the viewer's ability to receive video programming or fixed wireless services.

Please note that the Regulations do not require that the cost to a tenant of using a central antenna be equal to or lower than the costs of installing, maintaining, and using an individual antenna installed by the tenant. Rather, the Regulations require only that the landlord not do anything that "[u]nreasonably increases the cost of installation, maintenance, or use." 47 C.F.R. § 1.4000(a)(3)(ii).

Continental has previously been informed that it may make fixed wireless services available in its Clubroom by making arrangements to route its wireless signals over the existing WiFi backbone which has been installed and is operated by AWG, a third party vendor. I have been informed that AWG has a very reasonable rate structure for airline use based on the number of enplanements at Logan Airport or on the number of "hits. Please let Mr. Greg Zanni know if the AWG contact information should be sent to Continental. In addition, Continental may put in wired internet access that complies with all Lease provisions.

Continental remains in violation of its Lease obligations. Not only has Continental installed its wireless antenna without prior approval through the required Tenant Alteration Application ("TAA") process, but the antenna has interfered with wireless devices outside of Continental's club room. This interference presents an unacceptable potential risk to the "effectiveness or accessibility of any . . . communications system, key card access system . . . and other system, if any, installed or located on, under, in or adjacent to the Premises." Section 10.3 of the Lease. There are various safety and security wireless applications currently deployed over the WiFi backbone throughout the terminal area of Logan Airport, including critical public safety communications by the State Police, the Transportation Security Administration, and the Authority. Given the potential threat to public safety caused by Continental's unauthorized and unlawful wireless communications, the Regulations would permit Massport to require Continental to remove its antenna and stop providing fixed wireless services even if the existing WiFi backbone did not constitute a reasonable substitute, which it does. See 47 C.F.R. § 1.4000(b)(1) (restrictions on use of fixed wireless antennas are permitted where "necessary to accomplish a clearly defined, legitimate safety objective").

Ms. Donna J. Katos, Esq., Continental Airlines

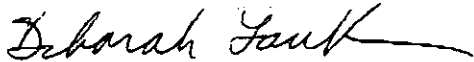
July 5, 2005

Page 3

As requested in the letter to Continental dated June 10, 2005, please have the unauthorized antenna removed by July 9, 2005. If Continental fails to do so, Massport will take all necessary steps to have the antenna removed.

Sincerely,

MASSACHUSETTS PORT AUTHORITY



Deborah Lau Kee
Associate Deputy Chief Legal Counsel

cc: Greg Zanni
David Mackey, Esq.